IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1951

No. 143

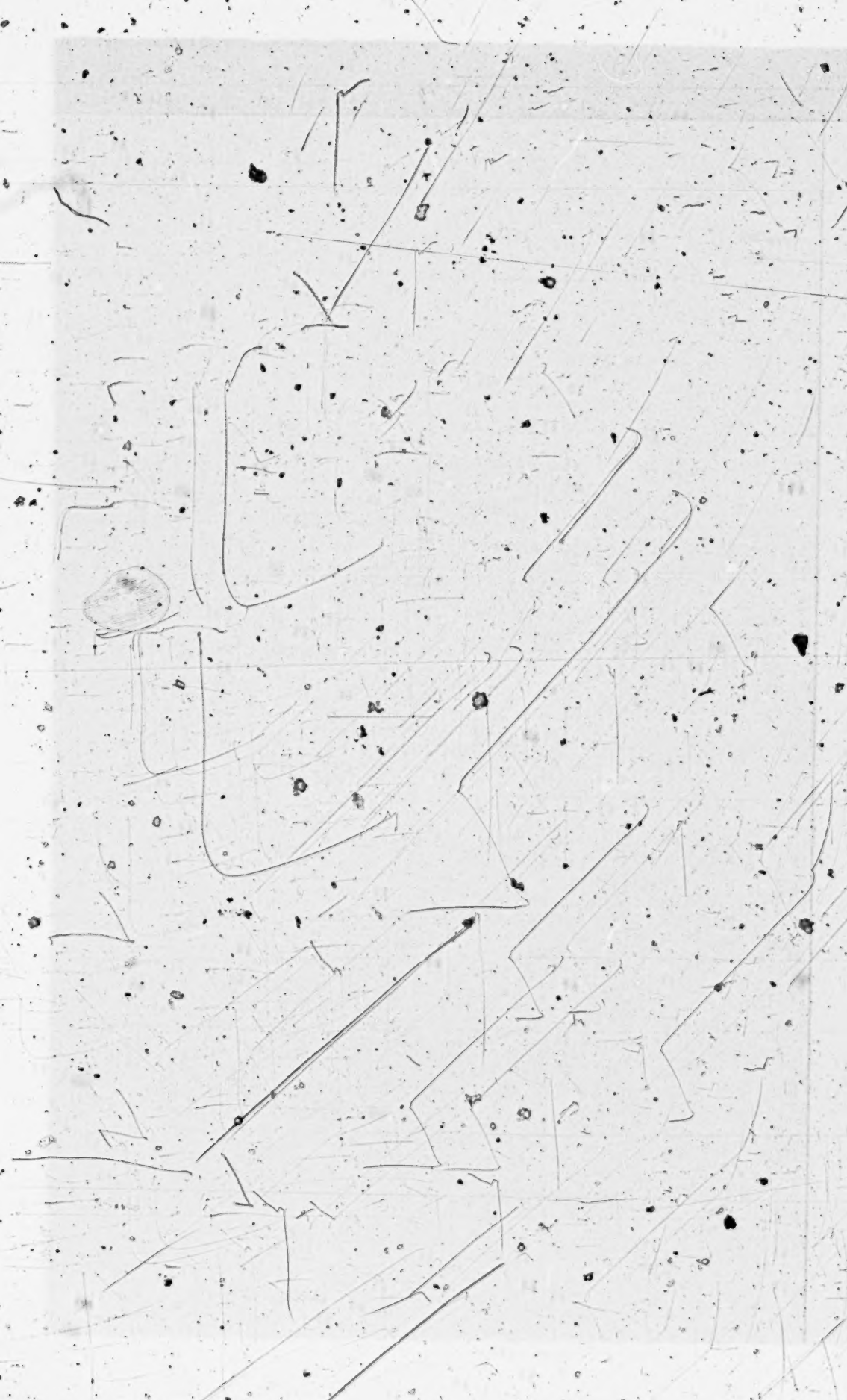
VERNA LEIB SUTTON,
Petitioner,
vs.
R. WELLS LEIB,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals For the Seventh Circuit.

REPLY BRIEF OF RESPONDENT, IN OPPOSITION TO PETITION FOR CERTIORARI

ARTHUR M. FITZGERALD,
908 Ridgely Building,
504 East Monroe Street,
Springfield, Illinois.
Attorney for Respondent.

SCHNEPP & BARNES, PRINTERS, SPRINGFIELD, ILL.



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To the Honorable Chief Justice and Associate Justices of of the Supreme Court of the United States:

STATEMENT

The statement of the case by petitioner is sufficiently inclusive to inform the court of the salient facts, with a few exceptions, which we here supply: After her marriage in Nevada on July 3, 1944, and upon her return to New York, through her attorneys, wrote to respondent, informing him that she was remarried and that his obligation to pay alimony under the terms of the Illinois divorce decree,

were ended with the exception of $180.00 owing to her at the time of her remarriage (R. 12-13). Respondent paid such sum of $180.00 and demanded and received a receipt or letter acknowledging satisfaction in full of all sums due under the Illinois decree (R. 60-61-62-63-64-65-66). The trial court held that such satisfaction piece constituted a full settlement and release, binding upon petitioner (R. 48 and 50), and that accordingly it was not necessary to determine which of the conflicting judgments (Nevada divorce and remarriage, or New York annulment) was entitled to "full faith and credit" in Illinois. These facts not only show a complete compliance by respondent with the decree in the Circuit Court of Illinois, but also clearly disclose that petitioner construed and interpreted the terms of the decree, and the settlement agreement, to be that any marriage by her was the termination of respondent's obligation. The Court of Appeals did not agree with the Trial Court in respect to the judgment of the trial court that what was done amounted to a release and satisfaction of all obligations of respondent to petitioner (R. 88-89). In so holding we believe the facts were not fully realized. It held that the Nevada marriage of petitioner was valid in Nevada and was entitled to full faith and credit in all sister states, and that the New York annulment had and has no extraterritorial effect, either in Nevada (where the marriage was contracted) or in Illinois (where the alimony decree was originally entered) (R. 89-90). It is our belief that the construction placed upon the last payment made by respondent at the demand of the petitioner, constitutes a construction by both parties upon the agreement which is embodied in the decree of divorce of the Circuit Court of Sangamon County, Illinois.

Reasons in Opposition to Petition

We do not believe that the case of Williams vs. North Carolina was misunderstood by the United States Circuit Court of Appeals.

The facts in this case clearly disclose that petitioner, who is a mature person, went from New York to Nevada, aware of all facts disclosed by the record, as stated in the opinion of the Circuit Court of Appeals. The demand made by her for the payment of alimony, even for the month in which she was married, was made with the full understanding of her contract with respondent and the payment pursuant to this demand was intended by her and her attorneys, and the respondent and his attorneys, to completely discharge all further obligations of respondent to her under that divorce decree and contract. This construction should be given great weight and the question of good faith, by petitioner, should be considered with reference to the exercising of the discretion of the court in this application. Despite the assertion by petitioner that the case presents a question of great public importance, we do not believe that this is so. Nowhere in any of the decisions of this court can we find any statement which justifies this conclusion.

PROPOSITIONS OF LAW

I.

A marriage is valid everywhere if the requirements of the marriage law of the State where the contract of marriage takes place are complied with (even though in contravention of the public policy or statutes of a State in which the parties were domiciled either before or after such marriage).

Williams vs. North Carolina (I), 317 U.S. 287, 307;
Williams vs. North Carolina (II), 325 U.S. 226, 239;
Loughran vs. Loughran, 292 U.S. 216;
Travers vs. Reinhardt, 205 U.S. 423;
Pierce vs. Pierce, 379 Ill. 185;
Youmans vs. Youmans, —Minn.—; 15 N.W. (2d) 537; 154 ALR 1171, 1177 (adoption);
Yarbourough vs. Yarbourough, 290 U.S. 202 (child support);
Brown vs. United States, 164 Fed. (2d) 490 (3rd Cir.);
Lembcke vs. Lembcke, 181 Fed. (2d) 703, 704 (2nd Cir.);
15 *Corpus Juris, Secundum*, P. 909, Sec. 14c "Conflict of Laws";
Restatement—"Conflict of Laws" Sec. 121;
Reifschneider vs. Reifschneider, 241 Ill. 92;
Stevens vs. Stevens, 304 Ill. 297;
Ertel vs. Ertel, 313 Ill. App. 326 (331);
Pierce vs. Pierce, 379 Ill. 185 (190-1);
Powell vs. Powell, 207 Ill. App. 292. Affd. 282 Ill. 357.

II.

The full faith and credit clause of the Constitution, while requiring recognition of a status created by the laws or judgments of a sister State, does not necessarily require that the domicilliary State extend, within its borders, the incidents flowing from or attached to such status. But in refusing to extend such incidents to its domicilliaries, such state cannot impose its domestic or public policy beyond its own borders. In other words the New York annulment does not vitiate or destroy the existing status of the parties in Nevada, in Illinois or in any other State.

Alaska Packers Association vs. Industrial Acci. Com., 294 U.S. 532;

Re Youmans, —Minn.—; 15 N.W. (2d) 537; 154 ALR 1171, 1177;

Yarbourough vs. Yarbourough, 290 U.S. 202, 216, 219;

New York vs. Halvey, 330 U.S. 610, 617, 618;

Criss vs. Industrial Commission, 348 Ill. 75 at 80;

Pierce vs. Pierce, 379 Ill. 185 at 189;

Reifschneider vs. Reifschneider, 241 Ill. 92 at 96;

Restatement of the Law (Conflict of Laws) Sec. 134.

III.

Marriage is a civil contract to which there are three parties, the husband, the wife and the state. One of the incidents arising out of that status is the duty of the husband to support his wife. Under this contract and the decree plaintiff was not unmarried immediately when she entered into a marriage with Walter J. Henzel, at Reno, Nevada, on July 3, 1944.

Maynard vs. Hill, 125 U.S. 190;

Leland vs. Leland, 319 Ill. 426;
Heck vs. Schupp, 394 Ill. 296;
Arndt vs. Arndt, 399 Ill. 490.

IV.

The obligation to pay alimony may be abandoned by the one entitled to it, and the validity of remarriage when this is stated as the termination period of the obligation to pay alimony, does not affect the right of recipient, but all obligation upon the part of the one required to pay, ceases.

Lehmann vs. Lehmann, 225 Ill. App. 513;
Stillman vs. Stillman, 99 Ill. 196;
Britton vs. Chamberlain, 234 Ill. 249;
Maginnis vs. Maginnis, 323 Ill. 118.

ARGUMENT

Respondent does not know what occurred in Nevada with reference to the divorce of Walter J. Henzel, and he does not know what occurred in petitioner's annulment proceeding in New York. He was not a party to either proceeding and had no information whatever as this record discloses, until the time when demand was made upon him for the revival of alimony payments before this suit was begun (R. 10). This claim for such payments was for the period inclusive of August 1st, 1944 to November 21st, 1947 (the date of the Sutton marriage) (Opinion of Circuit Court of Appeals, PP. 87, 88). The complaint was filed in this case April 12th, 1950, and shows that Vera Leib, Petitioner, who was the former wife of respondent, is a citizen of New York; that she was married to respondent June 25, 1924, and divorced from him October 11, 1939 (R. 3); that he made payments to her in accordance with the decree until the first day of August, 1944 (R. 4); that on the 21st day of November, 1947, she was married to one Sherwood Sutton (R. 4); that on July 3, 1944, she married Walter J. Henzel in Reno, Nevada (Opinion of Circuit Court of Appeals, R. 87, 88). After her marriage, she and Walter J. Henzel resided together as man and wife until on or about August 3, 1944 (R. 22-23), when he was served with summons in a separate maintenance suit begun by his former wife, Dorothy Henzel. The decree in the proceeding brought by Dorothy Henzel was entered by the New York Court on June 22, 1945. In January of 1945 petitioner instituted proceedings in the Supreme Court of the State of New York for the annulment of her Reno marriage to Walter J. Henzel (R. 23). On June 6, 1947, an interlocutory

judgment was entered in her favor, annuling the marriage. This became final three months after that date (R. 24). On November 21, 1947 she was married to Sherwood Sutton (R. 4). Thereafter this suit was filed to recover alimony during the period she was married to and living with Henzel, and thereafter until the Sutton marriage. There was no decree of any court that her marriage to Henzel was void.

We do not question the right of any court to inquire collaterally into a void decree entered by any other court. However, it must be borne in mind that this record does not disclose any attack in Nevada, upon the marriage of these persons. New York undoubtedly has the power to determine the validity of a marriage between its citizens, or one of its citizens, and another person. Its judgment could not in any regard be res adjudicata, so far as respondent is concerned, because he was not a party to the proceedings in New York. Illinois does give full faith and credit to the judgment of the State of New York, in which it is held that insofar as its citizens were concerned, in that State, the divorce obtained by Henzel in Nevada was void. This judgment of the New York court depended upon the facts presented to that court in that proceeding to which the respondent was not a party. The courts of each state insofar as marital questions are concerned, have sole power to determine the status of their citizens. This does not in any way affect the validity of the marriage in Nevada of petitioner and Henzel, so far as Nevada is concerned.

The statement made by petitioner that the court of appeals did not understand the effect of the decision in the case of *Williams vs. North Carolina*, 325 U.S. 226; 65 S. Ct. 1092; 89 L. Ed. 1577. Certain excerpts from the opinion

brief, but a reading of the opinion of the Circuit Court of Appeals clearly discloses that the effect of the decision in this case, upon the situation presented by the record, was clearly considered by the court, and we submit that the conclusion reached by the court in regard to it, is sound.

We desire to carry the thought of the marriage of petitioner and Henzel, in Nevada, as the basis for the termination of the obligation of respondent, as shown by the settlement agreement and the decree approving it. In the case of *Lehmann vs. Lehmann,* 225 Ill. App. 513, on page 526, the Court said:

> "Even though it be considered that such marriage was not a valid one in *Illinois,* it was valid in New Jersey, where performed, and also valid in their subsequent successive domiciles, and we think that under all the facts disclosed it should be held, contrary to the finding of the chancellor in the decree appealed from, that she remarried within the meaning of the words contained in said divorce decree of April 1, 1915, and in the written agreement entered into between the parties, about that time, and that she thereby elected to forfeit, and did forfeit, her right to receive alimony for her own support thereafter from respondent. As said in *Stiliman vs. Stillman,* 99 Ill. 196, 202: 'It is her privilege to abandon the provision the decree of the court made for her support under the sanctions of the law, for another provision for maintenance which she would obtain by a second marriage, and when she has done so the law will require her to abide her election.' "

The facts in this case clearly show that the petitioner believed she was entering into a valid marriage in Nevada with Henzel. This is shown by her demand for alimony payments due for June and July of 1944. Upon the payment of the amounts due her for those months—she stated that this was in full of all further obligations of the respond-

ent. This payment was made by respondent upon the theory that his entire obligation to her under the decree in their divorce was completely ended. Both parties placed this construction upon the contract. There is reason for this belief found in the decree, and in the obligation of a husband to support his wife. The Common law and the decisions under our divorce statutes uniformly sustain this obligation not only during the marriage, but after a divorce, and in Illinois in some instances even though the fault be that of the divorced wife. When a divorced woman remarries she determines that she will look to the person then becoming her husband as a substitute for her former husband, with reference to this obligation. This is the effect of the decision in the case of *Lehmann vs. Lehmann,* 225 Ill. App. 513, and it is sustained by the cases which we have cited in our Division IV of the Propositions of Law.

Upon page 527 of the opinion in the *Lehmann case* the court said:—

> "Both petitioner and respondent seemingly believed that the former had lost her right to receive such alimony from the latter and they acted accordingly, and thereby themselves practically construed their own agreements as to alimony. Such construction is entitled to great if not controlling weight and should, we think, be followed. (13 *Corpus Juris,* page 546, sec. 517; *Sholl Bros. vs. Peoria & P. U. Ry. Co.,* 276 Ill. 267.)"

Here is presented this situation. A mature woman was first married to respondent in 1924; twenty years thereafter, in 1944, she married Henzel, leaving her home in New York to go to Nevada for this purpose and knowing that he was in Nevada for the purpose of securing a divorce from his wife. She was chargeable with the knowledge of the laws of New York. After the determination of the

ew York Courts that her marriage to him was invalid on eptember 6, 1947, on November 21, 1947, she married erwood Sutton, and in her affidavit states that they are ill husband and wife (R. 24).

She was not an innocent person, being imposed upon, t upon two occasions, after her divorce from respondent, termined to look to first Henzel and then Sutton for the rformance of the obligation of support and maintenance rmerly imposed upon respondent. This construction the agreement entered into between her and respondent, d embodied in the decree, is entitled to great weight, and e petitioner should not now be heard to say that she did t know that the marriage she was entering into in evada, was invalid.

We respectfully submit that there is nothing unique in is situation and no matter of great public moment. We ge that petitioner does not come into this court, and did t come into the district court, asking relief upon any eritorious basis, and that by her own conduct and her n construction of respondent's obligation, and her suc-ssive marriages, she had clearly terminated all obliga-n of respondent to her.

Respectfully submitted,

Arthur M. Fitzgerald

Arthur M. Fitzgerald,
908 Ridgely Building,
504 East Monroe Street,
Springfield, Illinois.
Attorney for Respondent.